

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

DONNIE SMITH,)	
)	
Petitioner,)	
)	
v.)	No.: 3:16-CR-122-TAV-HBG-1
)	3:18-CV-331-TAV-HBG
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

This criminal matter is before the Court on the Report and Recommendation (“R&R”) entered by United States Magistrate Judge H. Bruce Guyton on August 19, 2021 [Doc. 26].¹ Judge Guyton recommends that the Court grant Petitioner’s motion to vacate, set aside, or correct his sentence [Doc. 2] and that Petitioner be permitted to bring a delayed direct appeal. There have been no timely objections filed to the R&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(2).

After carefully reviewing the matter, the Court agrees with Judge Guyton’s recommendation and reasoning, which the Court adopts and incorporates into its ruling. Accordingly, the Court **ACCEPTS IN WHOLE** the R&R [Doc. 26]. Petitioner’s motion to vacate, set aside, or correct his sentence [Doc. 2] is **GRANTED**, and Petitioner may bring a delayed direct appeal.

Generally, a criminal defendant must file a notice of appeal within fourteen days of the entry of judgment. *See* Fed. R. App. P. 4(b). However, Federal Rule of Appellate

¹ Citations to the record refer to case number 3:18-CV-331-TAV-HBG.

Procedure 4(b)(4) provides that the Court may upon finding excusable neglect or good cause—even after the fourteen-day period has expired—extend the time to file a notice of appeal by up to thirty days.

The Court notes Defendant is currently in transit among Bureau of Prisons facilities. *See generally Find an Inmate*, Fed. Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited Sept. 7, 2021) (BOP Register Number 51867-074). Thus, for good cause, the Court finds Defendant needs additional time to file his notice of appeal. Accordingly, the Court **GRANTS** Defendant an additional thirty days to file his notice of appeal. Defendant therefore must file his notice of appeal, if at all, **within forty-four (44) days** of entry of this Order.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE